

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101  
Document prepared by: Christopher M. Gratz, Planner II

**SUBJECT:** Variance, V 1-1-03 Rod Feiner, Esq./BP Products North America, Inc., 4450 University Drive/Generally located at the northeast corner of University Drive and Orange Drive.

**AFFECTED DISTRICT:** District 2

**TITLE OF AGENDA ITEM:** V 1-1-03 University Amoco Replat, 4450 University Drive (B-2)

**REPORT IN BRIEF:** The petitioner has requested to reduce the minimum lot area required in the B-2, Community Business District of 52,500 square feet to 43,901.2 square feet in order to replat the subject site for 8,015 square feet of commercial use.

The intent of the 52,500 square foot minimum lot size of the B-2, Community Business District required by the Land Development Code is so that parcels with this designation can provide adequate setbacks, parking, and open space to support the uses permitted in the zoning district. The owner of the legal nonconforming Amoco Gas Station site has purchased the nonconforming site to the east that is zoned B-2, Community Business District. Any use of this site requires site plan approval, but does not require replatting. The replat is needed so redevelopment may be permitted. When the sites are replatted together the land then becomes a single parcel. Approving the replat does not give the owner any right to redevelop the parcel with a motor fuel pump or any other use that has a distance separation requirement without obtaining a variance. It only gives the owner the right to 8,015 square feet of a commercial use on the site. A declaration of restrictions recognizing this has been presented with the plat request.

The request represents an 8,598.8 square foot (0.197 acre) reduction in the minimum lot size for a parcel zoned B-2, Community Business District. A site plan that provides adequate setbacks, parking, and open space for a use permitted in the B-2, Community Business District can be designed. However, as noted above, the nonconforming lot can be used without granting this variance request or replatting.

**PREVIOUS ACTIONS:** None.

### CONCURRENCES:

At the June 25, Planning and Zoning Board meeting, Mrs. Lee made a motion, seconded by Mr. McLaughlin, to approve (Motion carried 5-0).

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

**Attachment(s):** Planning Report, Justification, Declaration of Restrictions, Survey, Future Land Use Map, Zoning and Aerial Map

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**TOWN OF DAVIE**  
**Development Services Department**  
**Planning and Zoning Division Staff**  
**Report and Recommendation**

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**Applicant Information**

<b><u>Owner:</u></b>		<b><u>Agent:</u></b>	
<b>Name:</b>	BP Products North America, Inc.	<b>Name:</b>	Rod Feiner, Esq.
<b>Address:</b>	2475 Northwinds Parkway, Suite 400	<b>Address:</b>	644 SE 5 Avenue
<b>City:</b>	Alpharetta, GA 30004	<b>City:</b>	Fort Lauderdale, FL 33301
<b>Phone:</b>	(770)576-3216	<b>Phone:</b>	(954)761-3636

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**Background Information**

**Date of Notification:** June 18, 2003      **Number of Notifications:** 75 (1,000' radius)

**Application History:** No deferrals have been requested.

**Application Request:** Variance **FROM:** Section 12-83 of the Land Development Code which requires that properties zoned B-2, Community Business District have a minimum lot area of 52,500 square feet; **TO:** reduce the minimum lot area to 43,901.2 square feet.

**Address/Location:** 4450 University Drive/Generally located at the northeast corner of University Drive and Orange Drive.

**Future Land Use Plan Designation:** Commercial

**Zoning:** B-2, Community Business District

**Existing Uses:** Amoco Gas Station and a parcel with two (2) vacant concrete block structures and a metal shed.

**Proposed Use:** 8,015 square feet of commercial use

**Total Parcel Size:** 1.008 acres (43,901.2 square feet)

**Motor Fuel Pump Parcel:** 0.675 acres (29,402.8 square feet)

**B-2 Parcel:** 0.33 acres (14,498.4 square feet)

	<b><u>Surrounding Uses:</u></b>	<b><u>Surrounding Land Use Plan Designation:</u></b>
<b>North:</b>	Firehouse Grill	Commercial
<b>South:</b>	Orange Drive	Commercial
<b>East:</b>	Single family dwelling, Retention pond	Residential (10 DU/AC)
<b>West:</b>	University Drive	Transportation

**Surrounding Zoning:**

<b>North:</b>	B-1, Neighborhood Business District
<b>South:</b>	B-2, Community Business District
<b>East:</b>	R-5 Low Medium Density Dwelling District
<b>West:</b>	T, Transportation District

**Zoning History**

**Previous Requests on same property:**

The site plan, Amoco Oil Company, was approved on December 21, 1977.

The plat, P 7-1-89 University Amoco, was approved on August 16, 1989.

The site plan, SP 1-2-03 BP University Drive, was submitted for review on January 21, 2003, and Development Review Committee Comments were issued on May 13, 2003.

The plat, P 6-1-02 University Amoco Replat, has been submitted concurrently with this variance request.

It is noted that the current construction activity occurring on the site is for the removal of the self-service car wash area and is being done with building permits.

**Application Details**

The petitioner has requested to reduce the minimum lot area required in the B-2, Community Business District of 52,500 square feet to 43,901.2 square feet in order to replat the subject site for 8,015 square feet of commercial use.

**Applicable Codes and Ordinances**

Section 12-83 of the Land Development Code requires that properties zoned B-2, Community Business District have a minimum lot area of 52,500 square feet.

Section 12-33(BB) Replatted lots: No resubdivision of platted lots shall be permitted except by an approved and recorded amended plat. In any such resubdivision no lot shall be created of lesser size than the minimum required in the district within which such land is located.

Section 12-34(Y) Service Stations and Motor Fuel Pump Islands: The location of service stations and motor fuel pump islands as a primary or an accessory use shall be subject to the following limitations and restrictions:

- (1) Street frontage and area. A lot to be occupied by a service station or pump islands shall not have less than one hundred fifty (150) feet street frontage with an area of not less than forty-three thousand five hundred sixty (43,560) square feet.
- (2) Location of service stations. There shall be a minimum distance of two hundred fifty (250) feet, shortest airline measurement, between the nearest points on any lot to be occupied for fuel pump islands and/or service station purposes and any lot which is occupied by a church, playground, playfield, hospital, elementary school, middle school, high school or any lot to be occupied for service station purposes and any lot which is occupied, planned, zoned, or land use plan designated residential. The application shall furnish a certified survey from a land surveyor registered in the State of Florida, indicating the distance between the proposed facility and any applicable above uses.

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### **Comprehensive Plan Considerations**

**Planning Area:** The subject property falls within Planning Area 8. This Planning Area is the heart of Davie and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer, large-scale multi-family residential developments that serve the rapidly growing South Florida Education Center (SFEC). It is bounded on the north by Nova Drive, south by Orange Drive, east by Florida's Turnpike, and west by University Drive. The planning area encompasses the downtown Davie Business District, where western theme architecture is required, the Davie Town Hall and Rodeo Arena, two large mobile home communities, and industrial land.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 99.

**Applicable Goals, Objectives & Policies:** *Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 5-2:* The (re)zoning, (re)platting, and site planning of land shall be in compliance with the density ranges shown on the Davie Future Land Use Plan map and the applicable Future Land Use Designation provisions as contained in the Permitted Use portion of the Implementation Section.

*Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-1:* Lands designated for non-residential use shall be located in a manner which facilitates development, but does not adversely impact existing and designated residential areas.

*Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-5:* Land development regulations shall provide for the eventual phasing out of non-conforming uses.

### **Staff Analysis**

The intent of the 52,500 square foot minimum lot size of the B-2, Community Business District required by the Land Development Code is so that parcels with this designation can provide adequate setbacks, parking, and open space to support the uses permitted in the zoning district. The owner of the legal nonconforming Amoco Gas Station site has purchased the nonconforming site to the east that is zoned B-2, Community Business District. Any use of this site requires site plan approval, but does not require replatting. The replat is needed so redevelopment may be permitted. When the sites are replatted together the land then becomes a single parcel. Approving the replat does not give the owner any right to redevelop the parcel with a motor fuel pump or any other use that has a distance separation requirement without obtaining a variance. It only gives the owner the right to 8,015 square feet of a commercial use on the site. A declaration of restrictions recognizing this has been presented with the plat request.

The request represents an 8,598.8 square foot (0.197 acre) reduction in the minimum lot size for a parcel zoned B-2, Community Business District. A site plan that provides adequate setbacks, parking, and open space for a use permitted in the B-2, Community Business District can be designed. However, as noted above, the nonconforming lot can be used without granting this variance request or replatting.

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### **Findings of Fact**

#### **Variances:**

#### **Section 12-309(B) (1):**

**The following findings of facts apply to the variance request:**

- (a) There are special circumstances or conditions applying to the land or building for which the variance is sought; which circumstances or conditions are peculiar to such land or building and do not apply generally to land or buildings in the same district; and that said circumstances or conditions are not such that the strict application of the provisions of this chapter would not deprive the application of the reasonable use of such land or building for which the variances are sought; and that alleged hardship is self-created by any person having an interest in the property.

*The subject site is unique as it is comprised of a legal nonconforming property and a nonconforming lot that were zoned B-2, Community Business District prior to the Land Development Code's minimum 52,500 square foot size requirement; the conditions do not generally apply to land in the same district; the circumstances would not deprive the applicant of reasonable use of the land since it has already been achieved without a variance on the legal non-conforming property and this variance is not needed in order to use the nonconforming lot; the variance request is created by the petitioner's desire to redevelop the nonconforming lot.*

- (b) The granting of the variance is not necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.

*Granting of the variance is not necessary for reasonable use of the land, since reasonable use has been achieved without a variance on the legal nonconforming property and can be achieved on the nonconforming lot. The request is the minimum needed to replat the property.*

- (c) Granting of the requested variances will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*The intent of the Land Development Code is to allow an interpretation to be made where there is a just balance between the rights of the landowner and all others who will be affected by that person's proposal. Allowing the property owner to replat the land will not be detrimental to the neighborhood.*

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#### **Staff Recommendation**

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration.

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#### **Planning and Zoning Board Recommendation**

At the June 25, Planning and Zoning Board meeting, Mrs. Lee made a motion, seconded by Mr. McLaughlin, to approve (Motion carried 5-0).

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#### **Town Council Action**

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#### **Exhibits**

1. Justification
2. Declaration of Restrictions
3. Survey
4. Future Land Use Map
5. Zoning and Aerial Map

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_



## REQUEST AND JUSTIFICATION FOR VARIANCE

### Request

To allow a lot located within the B-2 Zoning District to have a minimum lot area of 43,901 square feet when Section 12-83 of the Code requires that a lot situated within the B-2 Zoning District have a minimum lot area of 52,500 square feet.

### Justification

#### *General Statement Applicable to all Variances*

BP has expanded the size of the property on which an existing motor fuel pump station and car wash are located. BP has accomplished this by purchasing the commercially zoned property adjacent to the property on the eastern border of the existing site.

*There are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the same district; and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought, and that the alleged hardship is not self created by any person having an interest in the property.*

The property and lot in question are already existing and zoned B-2. This is a special and unique circumstance and does not normally apply to property which has been zoned B-2. Furthermore, the property which the applicant has purchased and added to the overall lot is also zoned B-2. The size of this lot was also smaller than allowed by Code for the B-2 zoning district. Thus, the applicant, by purchasing the adjacent property to the east, has actually eliminated two legally non-conforming lots and has expanded the size of one of the legally non-conforming properties to make it closer to the new requirements of the Town Code. This is also beneficial to the Town because there is no additional adjacent unplatted property in the area to which this lot could be joined.

*The granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.*

The minimum lot size variance is the minimum amount requested as there is no vacant land next to the property. The amount of land which the applicant dedicated for right-of-way purposes cannot be included in the total lot area calculation because this land is no longer owned by the applicant. Furthermore, the applicant has caused an increase in the overall lot size to occur by purchasing the property, also a legally non-conforming lot, to the east of the site. Thus, this variance is necessary for the reasonable use of the property or else the site will remain in its current condition as no other development can occur on this property without such a variance being granted.



*That granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The requested variance with regard to the minimum lot size meets the intent and purpose of the Code, which is to require certain property be a certain size. The proposed development takes two smaller legal non-conforming parcels and combines them into one parcel, which while smaller than allowed by Code is still larger than the currently existing parcels. Furthermore, the proposed variance will not be injurious to the public as the variance seeks to accomplish the intent of the Code and eliminates a smaller site from the possibility of development. Finally, the public will be benefitted because it will allow the redevelopment of a piece of property which is part of the scenic entry to the City.

Prepared by and return to:

Name: Rod A. Feiner, Esquire  
Address: Coker & Feiner  
644 Southeast 5<sup>th</sup> Avenue  
Fort Lauderdale, FL 33301-3104  
Telephone: (954) 761-3636

### **DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by BP PRODUCTS NORTH AMERICA, INC., a Maryland corporation, ("Owner"), in favor of THE TOWN OF DAVIE, a municipal corporation of the State of Florida ("Town").

#### **WITNESSETH:**

WHEREAS, Owner holds fee simple title to a parcel of land in the Town consisting of the following: Parcel "A", University Amoco Plat, according to the Plat thereof as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Public Records of Broward County, Florida, as well as lands adjacent to the University Amoco Plat and

WHEREAS, Owner has replatted the property encompassed within the University Amoco Plat in order to add additional land to the Plat, the replat being known as the University Amoco Replat, according to the Plat thereof as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Public Records of Broward County, Florida, and

WHEREAS, the University Amoco Replat contains only one lot, and

WHEREAS, there currently exists a motor fuel pump, car wash and convenience store on the property encompassed within the University Amoco Plat and now the University Amoco Replat, and

WHEREAS, Section 12-34(Y)(2) of the Town Code currently requires that there be a minimum 250 foot distance separation between a residential use and a motor fuel pump station, such measurement to be made from property line to property line, and

WHEREAS, the motor fuel pump use which is currently existing on the University Amoco Replat is a legal non-conforming use because it was legally permitted and is not now compliant with Section 12-34(Y)(2) of the Town Code, and

WHEREAS, the Owner and Town wish to confirm, for purposes of putting the public on notice, that the approval and filing of the University Amoco Replat does not grant the Owner any rights to expand the existing motor fuel pump use unless the Owner obtains relief from Section 12-34(Y)(2) of the Town Code or its equivalent successor, if any,

NOW, THEREFORE, in consideration of the foregoing, the Owner hereby agrees and declares as follows:

1. Recitals. That the above recitals are true and are incorporated herein by reference.
2. No Vesting of Development Rights. Owner hereby acknowledges that the mere recording of the University Amoco Replat, including its plat note, does not vest or allow the Owner to expand the legal non-conforming motor fuel pump use without first obtaining a site plan, variance or other relief and approvals from the Town.
3. Amendment and Modification. This instrument may only be modified, amended or released by a written instrument executed by the then owner of fee simple title to the parcel of land which is the subject of this Declaration and the Town Council of the Town.
4. Term of Covenant. This voluntary covenant on the part of Owner shall remain in full force and effect and shall be binding upon Owner, its successors and assigns, for an initial period of thirty (30) years from the date this instrument is recorded in the Public Records and shall be automatically extended for successive periods of ten (10) years thereafter, unless modified, amended or released prior to the expiration thereof.
5. Inspection and Enforcement. It is understood and agreed that any official inspector of the City has the right at any time to determine whether the conditions of this Declaration are being complied with. The prevailing party in any action or suit to enforce this Declaration shall be entitled to recover costs and reasonable attorney's fees. This enforcement provision shall be in addition to any remedies available under law.
6. Severability. Invalidity of any one of these covenants by judgment of a court of competent jurisdiction shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

7. Recording. This Declaration shall be filed of record among the Public Records of Broward County, Florida at the cost of the Owner and a recorded copy given to the Town within thirty (30) days of its recording.

8. Effective Date. This Declaration shall become binding on the date it is signed by all parties to the Declaration and shall constitute a covenant running with the land and be binding upon the Owner, its successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

BP PRODUCTS NORTH AMERICA, INC.,  
a Maryland corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



STATE OF \_\_\_\_\_ :

COUNTY OF \_\_\_\_\_ :

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgments, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of BP PRODUCTS NORTH AMERICA, INC., a Maryland corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same.

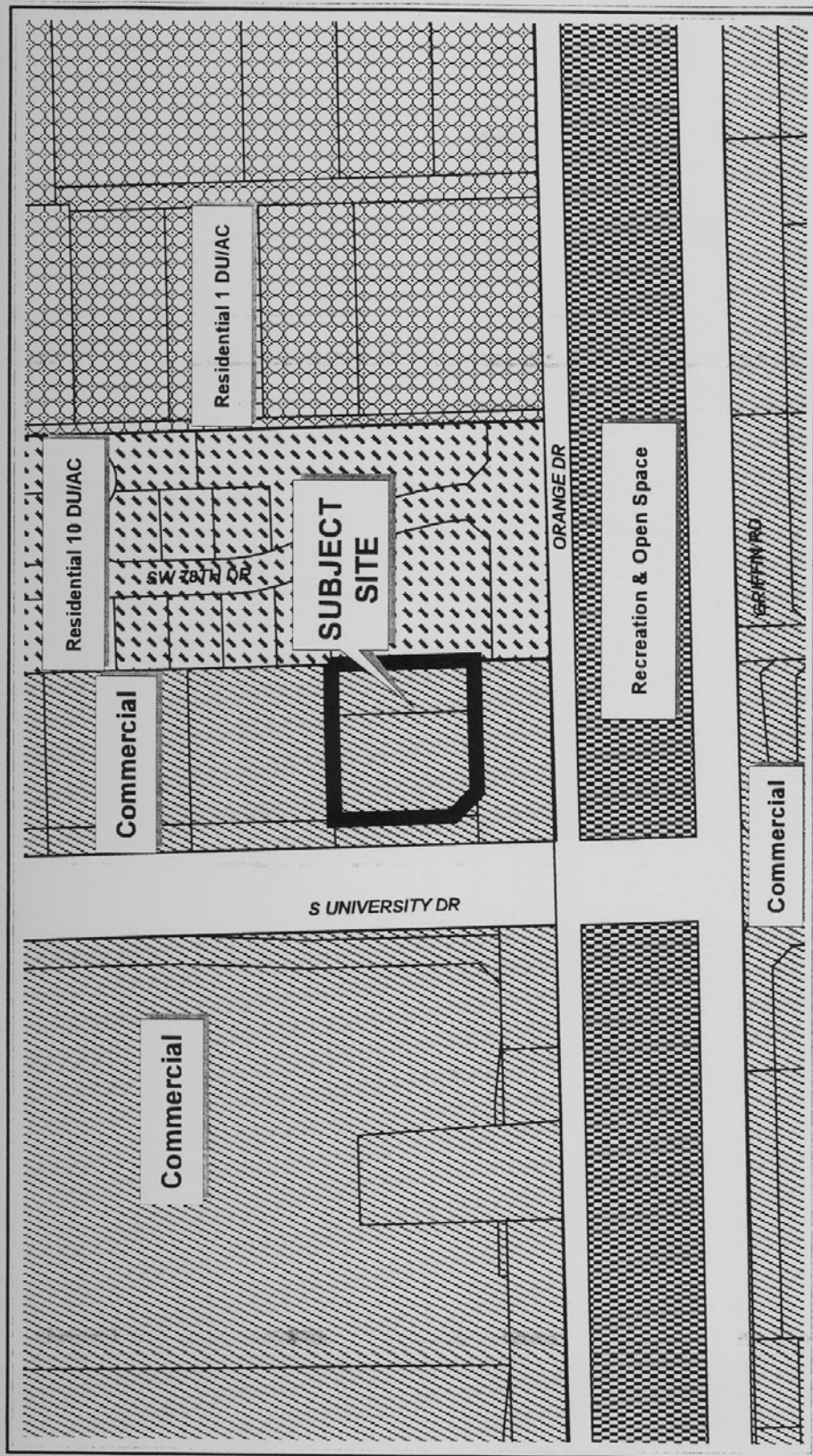
WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Signature of Notary or Officer

Notarial Seal (stamped in black ink)  
OR

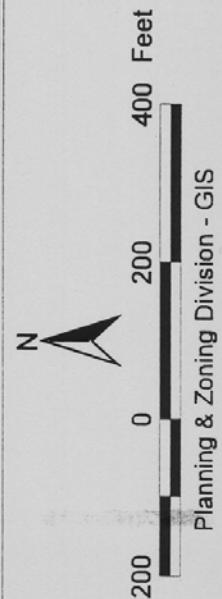
\_\_\_\_\_  
Printed Name of Notary Public  
State of Florida Commission Number:



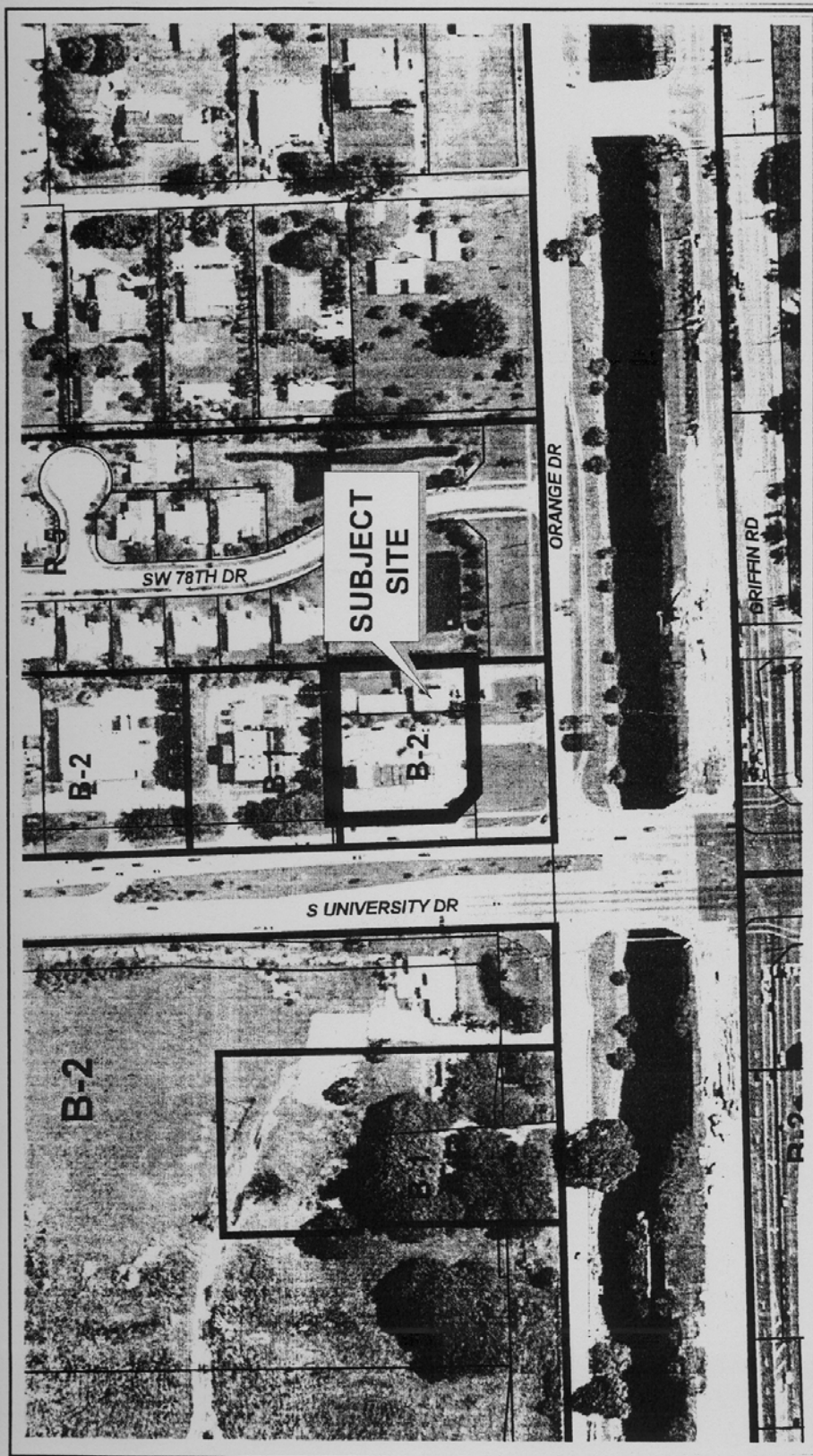


# **VARIANCE** **V 1-1-03** **Future Land Use Map**

Prepared By: ID  
 Date Prepared: 6/9/03







# **VARIANCE** **V 1-1-03** **Zoning and Aerial Map**

Prepared By: ID  
 Date Prepared: 6/9/03



Date Flown:  
 12/31/01



200 0 200 400 Feet

Planning & Zoning Division - GIS